IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Crl.MC.No. 3351 of 2004(D)

CMP.4400/2001 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TALIPARAMBA

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PETITIONER: COMPLAINANT:

C. RAJESH, S/O. KUNJURAMAN,
CHEEROPPERIKAVIL VEEDU, CHENGALAI AMSOM
DESOM, SREEKANTAPURAM, KANNUR DISTRICT.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS: ACCUSED & STATE:

1. M.V. SUKUMARAN, S.I. OF POLICE STATION
   IRITTY POLICE STATION, IRITTY, KANNUR DISTRICT.

2. K.J. VARGHESE, P.C.3971,
   IRITTY POLICE STATION, IRITTY, KANNUR DIST.

3. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY ADV. SRI.P.P.RAMACHANDRAN
SRI.M.V.AMARESAN
SRI.V.N.RAMESAN NAMBISAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10/08/2007 ALONG WITH CRMC. NO.179 OF 2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING

K. HEMA, J.

CRL.M.C.No.3351 OF 2004 &
CRL.M.C.No.179 OF 2006

Dated this the 10th day of July, 2007

O R D E R

Petitioner in Crl.M.C.No. 3351/2004 filed a private complaint which was taken on file as C.M.P.No.4400/2001. Allegations were made against respondents 1 and 2 in Crl.M.C.No.3351/2004. They have committed various offences. The complaint was adjourned from time to time without any cognizance. But in the meantime, on the basis of the First Information Statement given by the lst respondent in Crl.M.C.No.3351/2004, a crime was registered and after investigation, charge sheet was affected. Committal proceedings were initiated, since they involves consequent offences. The case was committed and it was numbered as S.C.No.316/2001. Petitioner in Crl.M.C.No.3351/2004 is one of the accused in the said case.

2. First respondent in Crl.M.C.No.3351/2004 filed Crl.M.C.No.179/2006 to quash the complaint filed by the petitioner in the said case, which was marked as Annexure-A1 in Crl.M.C.No.3351/2004. According to the petitioner, the learned Magistrate has failed to commit the case to the Sessions Court, though the complaint (Annexure-A1) is in the

nature of a counter case to the sessions case. Both the case and counter case have to be tried by the same court and hence the petitioner filed Crl.M.C.No.3351/2004 seeking for a direction to the Magistrate to commit the case to the Assistant Sessions Judge, Payyannur, before whom SC.No.316/2001 is pending. He also seeks for a direction to the Assistant Sessions Judge to adjourn the case pending committal of the case arising from CMP.No.4400/2001 on the file of the Judicial First Class Magistrate.

3. Petitioner in Crl.M.C.No.179/20026, who is the lst accused in C.M.P.No.4400/2001, seeks to quash the said complaint on various grounds. According to him, the complaint is filed with mala fide intentions and only as a counter blast to the sessions case.

4. On hearing both sides and on going through Annexure-A1 complaint (CMP.No4400/2001), it is clear that the allegations made in the complaint constitute various offences under the Indian Penal Code. But the offences alleged are under Sections 341, 323, 324 and 355 read with Section 34 of the Indian Penal Code. It is clear during the course of argument that the learned Magistrate has already taken cognizance of various offences on the basis of CMP.No.4400/2001 during the pendency of the petitions before this Court. Though it is argued by the learned counsel appearing for the petitioner in Crl.M.C.No.179/2006 that the complaint is only as a counter blast to the sessions case and is filed with mala fide intentions, there is nothing at this stage to substantiate these

contentions, especially since the allegations are controverted. This Court , in a proceedings of this nature, cannot go into the correctness of the allegations and the counter allegations, especially when the facts are disputed. The factual disputes cannot be resolved in a proceeding like this. Therefore, the complaint (CMP.No.4400/00) disclosing offences cannot be quashed invoking Section 482 of the Cr.P.C.

5. On going through Annexure-A1complaint, it appears that certain allegations are made against the defacto complainant in S.C.No.316/01 and another, who are accused in CMP.No.4400/2001. Allegations in SC.No.316/2001 and CMP.No.4400/01 relate to the same incident. Both the allegations have to be looked into by the same court to appreciate the contentions raised in the respective case. Cases being in the nature of a counter case, have to be tried by the same court. Therefore, the failure on the part of the learned Magistrate in not committing the case is illegal. The case ought to have been committed under Section 323 of the Code. I am satisfied that the case arising from CMP.No.4400/2001 is to be committed to be tried along with SC.No.316/2001. Hence, the following orders are passed:

1) There is no ground to quash Annexure-A1 complaint (CMP.No.4400/01) and hence Crl.M.C.No.179/06 is dismissed.

2) The Judicial Magistrate of First Class,

Taliparamba is directed to commit the case arising from CMP.No.4400/2001 to be tried along with S.C.No.316/2001pending before the Assistant Sessions Court, Payyannore.

3) The Assistant Sessions Judge, Payyannore shall not proceed with the trial in SC.No.316/2001, until counter case arising from CMP.No.4400/2001 is committed. Both the case and counter case shall be tried and disposed of simultaneously, in accordance with law.

4) The learned Assistant Sessions Judge shall dispose of the case as expeditiously as possible, since the matter is of the year 2000.

Crl.M.C.No.3351 is allowed.

K.HEMA,
Judge.

kcv.